

CHAPTER 4-000 NEGATIVE LICENSURE ACTIONS:

4-001 Child Care/Preschool: The options described in the following material are available to the Department to address noncompliance with regulations in licensed child care/preschool programs. The specific option determined by the Department will be based on the seriousness of the risk to the safety of children, the seriousness of the noncompliance, the compliance history of the provider, and the ability/willingness of the provider to develop and implement a corrective action plan.

4-001.01 Extension of a Provisional License: The provisional license may be renewed once if the Department determines that -

1. A licensee is unable to complete all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;
2. An effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department which is to be completed within six months.

4-001.02 Licensing Agreements: A Licensing Agreement is a document signed by the provider and witnessed by a Department staff member, a notary public or another non-relative witness identified by the provider. Licensing Agreements may be issued when household members and/or staff have a history of behaviors indicating a potential risk to children, excluding sexual abuse or sexual assault, and/or a rule violation is determined. Licensing Agreements may not be issued for any regulation for which denial or suspension/revocation action(s) has been taken.

The purpose of the Licensing Agreement is to specify areas of concern as they relate to licensing standards, to obtain the agreement of the licensee to correct any identified problem, and to maintain compliance with licensing standards.

Licensing Agreements may be offered in lieu of denial, probationary status, revocation, or emergency closing order of a license where the Department determines that a Licensing Agreement does not present an undue risk to children in care. Licensing Agreements are voluntary and discretionary and are not appealable.

4-001.03 Probationary License Status: A probationary license status will be determined when providers are found to be out of compliance with regulations and have a corrective action plan approved by the Department that specifies how compliance will be achieved within a six-month period. A probationary status is determined in the following circumstances:

1. A licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;
2. The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and
3. The licensee has a written plan of correction that has been approved by the Department.

The Director may issue a probationary license status following an administrative hearing.

4-001.04 Suspension or Revocation: The Department may initiate suspension or revocation proceedings under any of the following circumstances:

1. When a licensee has shown a history of repeated violations of regulations;
2. When a licensee has violated a regulation(s) so as to create a situation which places children at substantial risk;
3. When a complaint of suspected child abuse or neglect has been filed;
4. When any Department representative observes conditions or behaviors which may indicate suspected child abuse or neglect;
5. When the child care/preschool provider has a criminal charge filed against him/her involving a crime against children or a crime involving intentional bodily harm;
6. When a child in care dies at the facility;
7. When a licensee has violated any state statute regarding the care and protection of children;
8. When the licensee has violated any state statutes regarding the proper restraint of children when transporting;
9. When there is a fire safety (inspection) disapproval;
10. When there is a sanitation (inspection) disapproval;
11. When there is a conviction, admission, or substantial evidence of any offenses against children or adults including, but not limited to: physical abuse, sexual abuse, sexual assault, neglect, or endangerment by the child care provider;
12. When there is a conviction, admission, or substantial evidence of one or more of the following offenses by the child care provider:
 - a. Any offenses against adults excluding sexual assault and sexual abuse;
 - b. Felony conviction for the use, possession, manufacturing, or distribution of any controlled substance as defined in Nebraska Revised Statutes, Section 28-405, as it may be amended, or applicable federal law;
 - c. A history of property crimes, including but not limited to fraud, embezzlement, or theft by deception.

Mitigating circumstances, number of offenses, length of time since last offense, and intervention, treatment, or rehabilitation may be considered.

13. An entry of the child care provider, licensee, primary provider, secondary provider, regularly identified substitute, director and staff (which includes teachers, assistance teacher, and all support staff) as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry and/or Nebraska Adult Protective Services Central Registry;
14. When child care is being provided in the home of the child care/preschool provider, the following applies to household members:
 - a. Any entry as a perpetrator on the Nebraska Child Abuse and Neglect Central Registry for inconclusive or court-substantiated child sexual abuse;
 - b. Admission, conviction or substantial evidence of any child/adult sexual abuse, sexual assault, or crimes of a sexual nature including, but not limited to: obscene telephone calls, or any act considered to be lewd, indecent, or lascivious;
 - c. Any entry as a perpetrator on the Nebraska Adult Protective Services Central Registry for sexual assault;
 - d. Any household member appearing as a perpetrator of physical abuse/neglect on the Nebraska Child Abuse and Neglect Central Registry or the Nebraska Adult Protective Services Central Registry, or having a conviction, admission or substantial evidence of having perpetrated physical abuse or neglect of any child or adult shall not be on the premises during the hours of operation. Failure on the part of the provider to comply with this condition will be grounds for denial or revocation of the license.
15. A provisional license or probationary license status may be suspended or revoked if periodic reviews indicate that insufficient progress has been made toward compliance;
16. Denial of the extension of a provisional license will occur when any of the following is determined:
 - a. A licensee is unable to complete all licensing requirements and standards and has not made a good faith effort to comply and/or is incapable of compliance within a six-month period;
 - b. The effect of the provider's inability to comply with a rule or regulation present an unreasonable risk to the health, safety, or well-being of children or staff;
 - c. The licensee does not have a written plan of correction approved by the Department.
17. When a licensee has violated any regulation;
18. When a licensee has failed to pay the annual license fee.

When the Department initiates a negative action to suspend or revoke a license, the suspension or revocation action may continue to finality even if the license is surrendered by the licensee.

The licensee shall not transfer the license to a household member or current staff member while a suspension or revocation action is still pending.

Any staff person having knowledge of any of the previous circumstances shall immediately notify the appropriate Department staff.

4-001.05 Appeal Process: Pursuant to Nebraska Revised Statutes, Section 71-1915, the licensee has the right to appeal the revocation/suspension of a license within ten days of delivery of the notice from the Nebraska Department of Health and Human Services to initiate action to revoke/suspend:

1. The licensee must appeal in writing to Legal Services of the Nebraska Department of Health and Human Services Finance and Support within ten days of receiving the revocation/suspension notice.
2. A hearing will be afforded the licensee and notice sent to the licensee with the date, time and location of the hearing.
3. The hearing will be conducted pursuant to the applicable provisions of the Administrative Procedures Act (Nebraska Revised Statutes, Section 84-901, et seq.) as they may be amended from time to time.
4. The burden of proof at the hearing is upon the Department and the standard of proof will be by the preponderance of the evidence.

If the licensee submits a written appeal within ten days of delivery of the notice, the current license will remain in effect pending the final decision by the Director of the Nebraska Department of Health and Human Services.

If an appeal is not made to Legal Services within ten days of notice, a Declaratory Order finding the charges to be true will be issued within fifteen days of delivery of notice.

4-001.05A Action Following the Hearing: Following the hearing, the Director of the Nebraska Department of Health and Human Services shall determine whether the charges are true or not by a preponderance of the evidence, and if true, the Department Director may either -

1. Revoke/suspend the license; and/or
2. Impose a civil penalty of \$5.00 for each child in the program for each day in violation after the Department issues its finding and violation; or
3. Issue a probationary license status.

If the Department Director determines that the charges are not true by a preponderance of the evidence, the license will remain in effect.

4-001.05B Waiver of Attendance at or Failure to Appear at Appeal Hearing: The applicant may waive his/her right to an appeal hearing. The hearing notice provides the applicant with a written means to waive attendance at the hearing.

Failure of an applicant to appear at a scheduled hearing will result in a hearing being held and a decision entered.

After the Director has made a hearing decision, the applicant has the right to appeal this decision to the Nebraska District Court in accordance with Nebraska Revised Statutes, Chapter 84, Article 7.

4-001.06 Emergency Closing Order: Whenever the Director finds that an emergency exists requiring immediate action to protect the physical well being and safety of a child in a child care/preschool program, the Director may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that action be taken as the Director deems necessary to meet the emergency. Any person to whom the order is directed shall comply immediately, except that upon application to the Director, the person must be given an opportunity for a hearing as soon as possible, but not later than ten days after filing for a hearing. On the basis of this hearing, the Director shall continue to enforce the order or revoke, or modify it.

Hearings regarding Emergency Closing Orders will be conducted in accordance with the hearing provisions contained in the suspension or revocation appeal process.

4-001.07 Injunction: The Director may also petition the appropriate district court for an injunction whenever s/he believes that any person is violating any provision of the child care licensing law or any rule, regulation, or order adopted and promulgated under the authority of Nebraska Revised Statutes, Section 71-1915.